STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

P & S TRANSPORTATION, INC., and AUTO-OWNERS INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
January 16, 2007

No. 262506
Ingham Circuit Court
LC No. 04-000981-AV

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

Plaintiff appeals the circuit court order that reversed the district court's denial of defendants' motions for summary disposition. The circuit court found that defendants were entitled to summary disposition and remanded the case to the district court for entry of an order dismissing plaintiff's complaint. We affirm.

Plaintiff filed an action to recover the costs of repairing a bridge that was damaged when a truck, owned by defendant P & S Transportation, Inc. ("P & S"), and insured by defendant Auto-Owners Insurance Company ("Auto-Owners"), struck the bridge back in May 2001. Plaintiff did not file suit against P & S until March 2004, and Auto-Owners was added as a defendant by way of an amended complaint in April 2004. The district court denied defendants' motions for summary disposition, but the circuit court reversed. The circuit court found that P & S had no tort liability pursuant to MCL 500.3135 of the no-fault act, MCL 500.3101 *et seq*. With respect to Auto-Owners, the circuit court ruled that plaintiff's action was barred under the one-year statute of limitations in MCL 500.3145(2), and it rejected plaintiff's claim that the state was not subject to the statute of limitations pursuant to the doctrine of *quod nullum tempus occurrit regi*. The circuit court concluded that the doctrine had no application because MCL 600.5821(3) provides that the periods of limitations prescribed for personal actions apply equally to the state. We agree with the circuit court's assessment.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Likewise, this Court reviews de

novo issues of statutory construction and whether a period of limitations is applicable. *Detroit v 19675 Hasse*, 258 Mich App 438, 444; 671 NW2d 150 (2003).[1] Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide us with the most reliable evidence of the Legislature's intent. *Id.* at 549. In ascertaining legislative intent, this Court gives effect to every word, phrase, and clause in the statute. *Id.* We must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. *Id*. This Court must avoid a construction that would render any part of a statute surplusage or nugatory. *Bageris v Brandon Twp*, 264 Mich App 156, 162; 691 NW2d 459 (2004). "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

MCL 500.3145(2) provides that "[a]n action for recovery of property protection insurance benefits shall not be commenced later than 1 year after the accident." In *Hasse, supra* at 445, this Court acknowledged the doctrine of *quod nullum tempus occurrit regi*, stating, "It is a long-established principle of Michigan jurisprudence that periods of limitations do not operate against the state in the absence of a statute otherwise expressly so providing." MCL 600.5821(3) of the Revised Judicature Act (RJA), MCL 600.101 *et seq*., provides:

> The periods of limitations prescribed for personal actions apply equally to personal actions brought in the name of the people of this state, or in the name of any officer, or otherwise for the benefit of this state, subject to the exceptions contained in subsection (4).[2]

Plaintiff's interpretation of MCL 600.5821(3) is inconsistent with this Court's analysis and construction in *Hasse, supra* at 446-452, in which the Court addressed MCL 600.5821(3) and the state's common-law shield against periods of limitations. The *Hasse* panel ruled that subsection 5821(3) applied to "personal actions, or actions 'in personam,'" as opposed to actions "in rem." *Hasse, supra* at 447. The Court stated that an action "in personam" included an action

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[1] MCR 2.116(C)(7) applies to a motion for summary disposition predicated on an argument that the action is time-barred. Under (C)(7), this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. *Sewell v Southfield Pub Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). This Court must consider the documentary evidence in a light most favorable to the nonmoving party. *Herman v Detroit*, 261 Mich App 141, 143-144; 680 NW2d 71 (2004). If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995). If a factual dispute exists, however, summary disposition is not appropriate. *Id.*

[2] Subsection 4 is not applicable here.

in which a plaintiff claims that the defendant is bound "'to repair some loss.'" *Id.* at 447-448, quoting Black's Law Dictionary (6th ed), p 29. The action here is to recover costs associated with repairing the bridge that was struck by the insured vehicle, and the action is clearly a personal action or an action "in personam."

Plaintiff argues that subsection 5821(3) only addresses the need for equal application of limitation periods as between the state, a state officer, or with respect to any other suit brought for the benefit of the state, and that it does not subject the state to the same periods of limitations applicable to nongovernmental individuals or entities in personal actions. Plaintiff's interpretation is contrary to the plain language of the statute. The statute clearly subjects the state and state officers to the same periods of limitations applicable to all others in personal actions. If plaintiff's construction were correct, there would not have been any need for the *Hasse* panel to conduct its analysis and determine what actions constituted personal actions.

Plaintiff also argues that subsection 5821(3) only applies to periods of limitations contained in the RJA and not any found in the no-fault act. There is no merit to plaintiff's contention that its position is supported by the use of the language "*[t]he* periods of limitations," as opposed to "*all* periods of limitations," in subsection 5821(3). The language of subsection 5821(3) clearly encompasses any limitation period applicable to "personal actions." There is no language that can reasonably be construed as limiting its application to the RJA. The statute does not refer to the "RJA's" or the "act's" periods of limitations, nor does it contain language such as, for example, "as herein provided."[3] Indeed, to interpret the statute as argued by plaintiff would make it necessary for us to read limiting language into the statute that is simply not there, and this is not permissible. See *Roberts*, *supra* at 63. Additionally, there is nothing in *Hasse* that would suggest that subsection 5821(3) is limited to the statutes of limitations contained in the RJA.

In a decision recently issued by this Court in *Liptow v State Farm Mut Auto Ins Co*, __Mich App__; __NW2d__ (Docket No. 260562, issued October 24, 2006), the Court construed subsection 5821(4) relative to MCL 500.3145. MCL 600.5821(4) provides that the state is not subject to "*the* statute of limitations" when attempting to recover the cost of maintenance, care, and treatment of individuals in hospitals and other state institutions. (Emphasis added.) The Court found that the one-year back rule in MCL 500.3145(1), which was at issue, applied to the state, although the no-fault one-year statute of limitations would not have applied, given that subsection 5821(4) only addressed statutes of limitations and not damage limitation provisions. *Liptow*, *supra*, slip op at 6-7. Similarly, in *Regents of the Univ of Michigan v State Farm Mut Ins Co*, 250 Mich App 719, 733; 650 NW2d 129 (2002), this Court held that subsection 5821(4) exempted the state from the limitations period in MCL 500.3145 of the no-fault act. Subsection 5821(4) references "the" statute of limitations just as subsection 5821(3) references "[t]he" periods of limitations, and the panel in *Univ of Michigan Regents* stated that subsection 5821(4)

[3] One of the predecessors to subsection 5821 was 1948 CL 609.28, which referenced "limitations *herein before prescribed* for the commencement of actions[.]" (Emphasis added.) Comparable language has not survived and is not found in § 5821.

was intended to "exempt the state and its political subdivisions from *all* statutes of limitation." *Univ of Michigan Regents, supra* at 733 (emphasis added). Both *Univ of Michigan Regents* and *Liptow* went outside the RJA to look at the impact of § 5821 on the no-fault act and then conducted a substantive analysis regarding the interplay between the statutes; there was no finding that § 5821 was relegated solely to limitation periods contained in the RJA, nor that § 5821 was irrelevant for purposes of MCL 500.3145.

We conclude that subsection 5821(3) makes plaintiff subject to the one-year statute of limitations in MCL 500.3145(2); therefore, plaintiff's action was time-barred. Plaintiff, however, additionally argues that equitable estoppel precludes summary dismissal of its action in light of P & S's and Auto-Owners' alleged intentional and negligent conduct that precluded plaintiff from pursuing a proper and timely action. Plaintiff contends that P & S should therefore be barred from claiming tort immunity under the no-fault act and that Auto-Owners should be barred from using the no-fault act's one-year statute of limitations.

The record reveals that the accident occurred on May 1, 2001. The police report simply indicates that P & S's no-fault insurance carrier was unknown and not that there was no insurance. On November 26, 2001, plaintiff sent an invoice for the bridge repair costs to P & S, but there was no response. There was no inquiry by plaintiff in the November 2001 mailing regarding P & S's insurance carrier. Not until July 15, 2003, over two years after the accident and nearly two years since the first invoice was sent, did plaintiff send a letter to P & S requesting insurance information or, in the alternative, payment for the bridge repair. Again, there was no response by P & S; however, it was not until March 2004 before plaintiff filed suit, at which time it was informed that P & S was insured by Auto-Owners. The above facts are relied on by plaintiff in support of its equitable estoppel argument. As far as any alleged wrongdoing by Auto-Owners, plaintiff asserts that the insurer paid a claim for damages to P & S's truck soon after the accident, but did not contact the state.[4]

In *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997), our Supreme Court, addressing the doctrine of equitable estoppel, stated:

> One who seeks to invoke the doctrine generally must establish that there has been (1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party. This Court has been reluctant to recognize an estoppel absent intentional *or negligent* conduct designed to induce a plaintiff to refrain from bringing a timely action. Negotiations intended to forestall bringing an action have been considered an inducement sufficient to invoke the doctrine, however. [Citations omitted; emphasis in original.]

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[4] Plaintiff cites no authority suggesting that Auto-Owners was under a legal obligation to contact the state. Also, plaintiff's contention that Auto-Owners should have known that state property was damaged as a result of the accident is unreasonable and not supported by the record.

We conclude, as a matter of law, that plaintiff was not entitled to any protection under an equitable estoppel theory. The record does not support a finding of any misconduct on behalf of Auto-Owners. With respect to P & S, the record is insufficient to create an issue of fact showing that P & S engaged in conduct that was intentional or negligent and designed to induce plaintiff to refrain from bringing a timely action. We simply have evidence suggesting that the P & S driver did not have information regarding the company's no-fault insurer, along with evidence that P & S did not respond to two invoices and one insurance inquiry in a 20-month period. The insurance inquiry came 26 months after the accident, far exceeding the one-year deadline in MCL 500.3145(2). Because there was no registered or certified mailings by plaintiff, we cannot even ascertain whether the two inquiries were even received by P & S. The record would suggest that the problems that occurred in regard to commencing this litigation were caused by plaintiff's lack of diligence, timeliness, investigation, and follow-up, rather than any wrongdoing by defendants. We agree with the circuit court that plaintiff is not entitled to utilize equitable estoppel on this record and under these circumstances.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Alton T. Davis